

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAREN C. ROLES)	
Claimant)	
VS.)	
)	
THE BOEING COMPANY)	Docket No. 270,077
Respondent)	
AND)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent appeals the January 15, 2010, Post-Award Medical Award of Administrative Law Judge Thomas Klein (ALJ). Claimant was awarded all unpaid medical bills contained in Exhibits 1 and 2 to the deposition of John M. Brodnan, M.D., taken August 24, 2009. The ALJ determined that the present case is more than merely an injury to claimant's upper respiratory tract.

Claimant appeared by her attorney, Michael L. Snider of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kim R. Martens of Wichita, Kansas.

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Post-Award Medical Award of the ALJ.

ISSUES

Respondent raises the following issues in its Application For Review To The Workers Compensation Appeals Board, filed January 25, 2010:

1. "Whether the administrative law judge erred and should be reversed in awarding post award medical expenses over respondent and insurance carrier's compensability defense that the medical bills in issue are not

compensable under K.S.A. 44-510k for reasons including that claimant failed in her burden of proof of proving that the medical care and treatment being billed for was not [*sic*] necessary to cure and relieve the effects of the accidental injury/occupational disease that was the subject of the underlying award as is required by K.S.A. 44-510k.

2. "Whether claimant is estopped from changing her position on post award medical application regarding the body part injured, from the position she previously represented to the court in the underlying litigation of this claim, now seeking to expand the claim beyond the upper-respiratory vocal cord dysfunction, to now seek payment of medical bills for treatment necessary to cure and relieve the effects of the **lower respiratory injury which was the subject of her old claim settled in 1995.**
3. "If some but not all bills are awarded on appeal, respondent and insurance carrier request a specific statement of what bills are to be paid and what bills are denied, and to the extent any bills are ordered paid, respondent and insurance carrier request an affirmative statement that the out-of-state medical bills are subject to the Kansas Medical Fee Schedule.
4. "Whether the transcript costs of the hearing and deposition pursuant to K.S.A. 44-510k should be assessed to claimant."¹

FINDINGS OF FACT

Claimant began working for respondent on January 21, 1975. She has a long history of respiratory problems from 1978 forward. In 1979, she was diagnosed with bronchiectasis and underwent surgery on the lower lobe of her left lung. After the lobectomy, claimant required numerous additional medical treatments throughout the 1980s. Claimant was taken off work in 1991 and was determined to be permanently and totally disabled as the result of her respiratory problems. Claimant filed a workers compensation claim for these problems, and the matter was assigned Docket No. 152,551. A settlement held on February 22, 1995, settled claimant's claims against respondent with all issues being closed in the settlement, including claimant's right to future medical treatment and the right to review and modify the claim.

During the time claimant was off work from 1991 to 1996, claimant underwent treatment for asthma and the bronchiectasis and other breathing problems. By December 21, 1995, board certified allergist/immunologist Maurice Henry Van Strickland, M.D., determined that claimant's pulmonary disease had stabilized. He

¹ Respondent's Application For Review at 2-3.

released claimant to work in a smoke-free, chemical-odor-free environment at a desk job or a job involving no physical labor. Claimant returned to work for respondent on May 10, 1996, in Industrial Park Building-Three (IPB-3) as a lead person. The working environment in that building was clean and air conditioned.

An Active Medical Recommendations/Qualifications sheet dated March 14, 1996, indicated that claimant was restricted to work in a smoke-free and chemical-odor-free environment. In 1998, additional restrictions were noted to include no work in areas with irritant fumes, air conditioning was required and claimant was to not work in areas with skin irritants without protective equipment. However, in 1997, respondent moved claimant to a different area of IPB-3 that exposed claimant to chemicals contained in cleaning solvents and fumes from mini riveters. In late 2000, respondent again moved claimant, this time to Industrial Park Building-One (IPB-1), a building not air conditioned and with more workers and machines. Commencing in 1999, claimant began to develop upper respiratory problems with irritation in her throat and upper chest area. These symptoms differed from her previous symptoms which had centered in her lung area. Claimant was diagnosed with a vocal cord dysfunction which at least partially mimics asthma. Claimant was also diagnosed with gastroesophageal reflux and rhinosinusitis. Pulmonologist Daniel C. Doornbos, M.D., in his September 28, 2000, medical note, diagnosed claimant with stridor as well as expiratory laryngeal wheezing. While claimant did have asthma, the majority of her current problems related to her vocal cord spasms which could obstruct the airway leading to near respiratory failure. Claimant last worked for respondent on July 18, 2001.

Claimant filed a new claim for these recent symptoms, and the matter was assigned Docket No. 270,077. The matter again proceeded through litigation, and claimant was again determined to be permanently and totally disabled as the result of the exposures to chemicals and the dirty environment at work.

In late April 2003, claimant moved to Florida where she came under the care of board certified internal medicine specialist Felix A. Sosa, M.D. Claimant was then diagnosed with interstitial lung disease (ILD). This was described as scarring of the lungs from chemical exposure. Dr. Sosa related this condition to claimant's exposure to chemicals at respondent's plant.

On December 16, 2008, claimant was admitted to the Wuesthoff Medical Center (Wuesthoff) in Orlando, Florida, where she was placed under the care of board certified internal medicine and pulmonary specialist John M. Brodnan, M.D. Claimant was diagnosed with pulmonary fibrosis and acute infection with possible pneumonia and was suffering from respiratory failure. Claimant was also diagnosed with bronchiectasis. A history of mild bronchospasm was noted. The December 18, 2008, report from Wuesthoff indicated bilateral lower lobe bronchiectasis which had progressed significantly.

The patient history in the December 16, 2008, report from Wuesthoff indicated claimant had been on a ventilator for a long period of time and had a tracheostomy. However, the history indicated that a year or two ago she was well for a reasonable amount of time until one week prior to her admission, when she developed increasing cough, congestion, purulent secretions, yellow sputum production, fevers and chills.

Claimant was hospitalized and placed on a ventilator. She developed profound sinus bradycardia and it was determined that she needed a dual-chamber pacemaker to support her heart rhythm. The pacemaker was installed. The resulting medical expenses led to the filing of an Application for Post-Award Medical (form K-WC E-4) on March 12, 2009. The matter went to hearing on October 1, 2009, and the Post-Award Medical Award of the ALJ was issued on January 15, 2010. The ALJ ordered respondent to pay the entirety of the bills associated with the installation of the pacemaker and the medical costs associated with claimant's admission to Wuesthoff. The ALJ based his decision on the deposition of Dr. Brodnan taken on August 24, 2009. This is the only deposition taken in relation to this request for the payment of the medical expenses for claimant's admission to Wuesthoff on December 16, 2008, and the related expenses following that admission.

Attached to the deposition of Dr. Brodnan were February 8, 1988, reports from St. Joseph Medical Center discussing asthmatic bronchitis, bronchiectasis and arteriosclerotic heart disease. An August 17, 1994, report from the National Jewish Center discussed claimant's hypoxemia, asthma and a history of bronchiectasis.

Dr. Brodnan diagnosed claimant with respiratory failure secondary to the work-related pulmonary fibrosis. He testified that it was safe to assume that claimant's chronic and acute symptoms were related to her lung disease. These conditions then led to her cardiac issues and the ultimate installation of the pacemaker. He also testified that it was safe to assume that the medical bills which were unpaid were related to the workers compensation litigation. However, Dr. Brodnan was not able to review the medical bills prior to the deposition. Additionally, Dr. Brodnan was unable to verify that the bills were all related to the workers compensation claim. In fact, he acknowledged that claimant had been treated for a number of non-work-related conditions, including a left wrist orthopedic problem, diverticulitis, a questionable lesion on the left mid kidney, ear problems and hearing loss, abdominal pain, an abnormal liver and a slip-and-fall accident at Wal-Mart where claimant may have broken a rib.

In his letter of February 20, 2009, Dr. Brodnan opined that claimant's recent stay in the hospital and the treatment for both pulmonary and cardiac issues were likely related to her underlying pulmonary issues.² However, Dr. Brodnan was unaware that claimant had two separate workers compensation claims against this same respondent. He was

² Brodnan Depo., Ex. 1.

unable to state that her recent hospitalization was due to the vocal cord dysfunction. He acknowledged that the upper respiratory tracheotomy was healed by May of 2008 and there was no evidence of a connection between the need for the pacemaker and the sick sinus syndrome which was due to the upper respiratory vocal cord dysfunction. None of the medical bills in 2008 and 2009 were due to the vocal cord dysfunction.

When asked to differentiate between the first claim and the second claim, Dr. Brodnan testified that it was impossible to sort out which is the cause of the problem. It could be the result of an intraparenchymal lung problem or related to tracheal issues. He acknowledged that he was unable to determine one way or the other.³ Dr. Brodnan, when pressed, testified “I mean, the precipitating cause for the pacemaker was that she was sick, she was hypoxic, she had lung problems. There is really no way to sort out what is what.”⁴

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant’s burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.⁵

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.⁶

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.⁷

³ *Id.* at 29.

⁴ *Id.* at 30.

⁵ K.S.A. 44-501 and K.S.A. 44-508(g).

⁶ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁷ K.S.A. 44-501(a).

When a primary injury under the Workers Compensation Act arises out of and in the course of a worker's employment, every natural consequence that flows from that injury is compensable if it is a direct and natural result of the primary injury.⁸

Claimant requests that respondent be ordered to pay for the cost of the installation of the pacemaker and all associated medical bills from her admission to Wuesthoff in 2008. K.S.A. 44-510h(a) obligates the employer to "provide the services of a health care provider, and such medical, surgical and hospital treatment . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury." However, a claimant must first prove that the services requested are connected to the injury. In this instance, claimant has suffered two distinct series of injuries while working for the same employer. Both series led to a determination that claimant was permanently and totally disabled. However, the first litigated series was settled as to all issues, including claimant's entitlement to future medical treatment. If the need for medical treatment stems from this series of traumas, then claimant is precluded from collecting the requested medical payments. If, however, the need for the medical treatment is related to the second series of traumas, then claimant will be entitled to payment of the treatment by respondent.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Post-Award Medical Award of the ALJ should be reversed. The evidence fails to prove claimant's allegation that the medical treatment provided in 2008 and 2009 at Wuesthoff was related to the series of injuries encompassed in Docket No. 270,077. Dr. Brodnan, the only witness to testify, was handicapped by claimant's failure to timely provide all of the medical reports connected with claimant's past traumas. Additionally, Dr. Brodnan was unaware that claimant had suffered not one, but two series of accidents while working for respondent during periods that were several years apart. His inability to identify the medical conditions which led to claimant's need for a pacemaker is fatal to claimant's request. The award of the medical expenses by the ALJ is reversed. This renders moot issues number 2 and 3 above. Respondent remains responsible for the costs of the transcripts in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Post-Award Medical Award of Administrative Law Judge Thomas Klein dated January 15,

⁸ *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

2010, should be, and is hereby, reversed with regard to the award of the cost of claimant's hospitalization in December 2008 and the following medical treatments, including the installation of the pacemaker. Respondent is assessed the costs of the transcripts in this matter.

IT IS SO ORDERED.

Dated this ____ day of July, 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Kim R. Martens, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge